

# WETLANDS COUNCIL

## MINUTES

December 13, 2005

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The Wetlands Council met on Tuesday, December 13, 2005 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

**Attendees:** Brian K. Fowler, Chairman, Lawrence E. Morse, Sharon Champagne, Thomas G. Chrisenton, John S. Cobb, William M. Dannehy, Ben Frost, William Ingham, Jr., Camilla Lockwood, Glenn Normandeau, Seth S. Prescott, Russ St. Pierre and Thomas Sloan

**Absentees:** All present

The meeting was called to order by Chairman Brian K. Fowler at 9:05 a.m.

1. **Approval of Minutes of September 13, 2005 Meeting**  
*A motion was made by Councilor Cobb and seconded by Councilor Ingham to accept the minutes of September 13, 2005 as presented. It was unanimously voted.*

Councilor Frost arrived after the above vote.

4. **Old Business**  
Gretchen R. Hamel, DES Legal Unit Administrator, distributed a copy of a Request for Approval with Further Amendment, which, pending approval by the Wetlands Council, Ms. Hamel proposes to file with the Joint Legislative Committee on Administrative Rules to address the committee's concerns that a time requirement for filing a request to intervene be added to the council rules. Ms. Hamel has filed a request for a waiver of the requirement that the Request for Approval with Further Amendment be filed seven days in advance of the JLCAR meeting. If the request for waiver is granted the JLCAR would be able to act on the council rules at its meeting on December 15, 2005. Ms. Hamel requested that the council act on (1) the Request for Approval with Further Amendment and (2) adoption of the rules.

*A motion was made by Councilor Morse to approve the Request for Approval with Further Amendment as presented by Gretchen Hamel. Councilor Frost seconded the motion and it was unanimously voted.*

*A motion was made by Councilor Morse to adopt the Wetlands Council rules either (1) as approved by the JLCAR, or (2) as are subject to a final objection by the JLCAR at its meeting on December 15, 2005. Councilor Frost seconded the motion and it was unanimously voted.*

**2. Status of Appeals**

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with council members.

- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019  
A stay remains in effect. Mr. Sclafani expects that Mr. Thompson will advise the council by the end of January if he intends to go forward with this appeal.
- Docket No. 04-21 WtC - Lakeshore Realty Trust: WB #2001-01294  
The stay in this case expired on December 9, 2005. This case is scheduled for a status conference in superior court in January, and Mr. Sclafani expects that another request for a stay of the appeal before the council will be filed.
- Docket No. 04-23 WtC - John and Patricia Booth: WB #2004-00668  
On September 21, 2005 this appeal was withdrawn by the appellant.
- Docket No. 05-04 WtC - Philip and Georgette Smith: WB #2000-00914  
A written Decision & Order denying this appeal was issued on September 16, 2005. On September 26, 2005 a motion for reconsideration was filed.

***Councilor Morse made a motion to grant appellants' Motion for Reconsideration. Councilor Lockwood seconded the motion and it was unanimously voted.***

Chairman Fowler will confer with the parties to determine the need for a pre-hearing conference prior to a hearing on the Motion for Reconsideration.

- Docket No. 05-05 WtC - Steven Seufert: WB #2003-00296  
A written Decision & Order was issued on September 16, 2005 granting this appeal. This appeal is closed.
- Docket No. 05-08 WtC - Renate Ranniger: WB #2004-01185  
On September 21, 2005 a Request for Second Pre-hearing Conference was filed by the appellant. On September 29, 2005 a Pre-hearing Order was issued scheduling this appeal for hearing on January 10, 2006.
- Docket No. 05-12 WtC - Town of Barrington: WB #2004-02817  
On September 13, 2005, the council accepted this appeal. On September 23, 2005 the Wetlands Bureau filed a Certified Record with the council. On September 26, 2005, Attorney Edward Mosca filed an appearance and Motion to Intervene on behalf of the applicant. Appellant filed a Response to Applicant's Motion to Intervene on September 27, 2005. On October 7, 2005 the council granted applicant's Motion to Intervene. On October 11, 2005, Attorney Jennifer Patterson filed an appearance on behalf of DES and a pre-hearing conference was held. A Pre-hearing Order was issued on October 13, 2005 scheduling this appeal for hearing on February 14, 2006.

- Docket No. 05-13 WtC - Frederick Gallant: WB #2004-02467  
On September 13, 2005 the council accepted this appeal. On September 23, 2005 the Wetlands Bureau Certified Record was filed with the council. On October 11, 2005 a pre-hearing conference was held. A Pre-hearing Order was issued on October 13, 2005 scheduling the appeal for hearing on December 13, 2005. On November 23, 2005, appellant filed a Motion to Amend Petition for Appeal, Motion to Admit Exhibit into Record and Optional Pre-hearing Memorandum. Also on November 23, 2005, DES filed a Motion to Exclude All Evidence of Appellant's Alleged Heart Condition and a Pre-hearing Memorandum. On October 28, 2005, appellant filed a Notice of Service, Objection to Motion to Amend Appeal, and Objection to Motion to Admit Exhibit. On December 2, 2005, appellant filed responses to the state's objections to petitioner's (1) Motion to Amend Petition for Appeal and (2) Motion to Admit Exhibit into Record and (3) Motion to Exclude from Appeals Hearing Any and All Evidence of Appellant's Alleged Heart Condition. On December 5, 2005, a Decision & Order was issued to (1) Deny Motion to Amend Petition for Appeal, and (2) Deny Motion to Admit Exhibit into Record. Chairman Fowler ruled to grant the Motion to Exclude All Evidence of Appellant's Alleged Heart Condition. This appeal will be heard today at the conclusion of the council meeting.
- Docket No. 05-14 WtC - Ralph and Virginia Sanborn: WB #2004-01764  
On September 13, 2005, the council accepted this appeal. The Wetlands Bureau Certified Record was filed on September 23, 2005. On October 11, 2005 a pre-hearing conference was held. A Pre-hearing Order was issued on October 13, 2005 scheduling the appeal hearing for December 13, 2005. On December 2, 2005 appellant filed Proposed Finding & Rulings. On December 8, 2005, applicant filed a Motion to Intervene, Motion for Waiver of Env-WtC 205.13(b) and a Motion for Continuance. On December 12, 2005, a Decision & Order was issued granting applicant's Motion to Intervene, Motion for Waiver of Env-WtC 05.13(b) and Motion for Continuance. On December 12, 2005 a Notice of Appeal Hearing was issued rescheduling the appeal for hearing on March 14, 2006.
- Docket No. 05-18 WtC - Save Our Groundwater: WB #2004-02817  
On October 12, 2005 a Notice of Appeal was filed to remand to DES its May 26, 2005 decision issued to Francesco Rotondo, Trustee of Garrison Place Real Estate Investment Trust, to approve monitoring structures installed adjacent to Barrington Prime Wetland #40. On October 19, 2005, Attorney Edward Mosca filed on behalf of the applicant an appearance, a Motion to Intervene and a Motion to Dismiss. On October 25, 2005 a Decision & Order was issued granting applicant's Motion to Intervene. On November 14, 2005, Appellant filed a Motion to Reconsider Intervener Status and an Objection to the Applicant's Motion to Intervene. A Decision & Order was issued on November 16, 2005 denying the Motion to Reconsider Intervenor Status.

**\*Councilor Morse recused himself from discussion and vote on this appeal.**

***A motion was made by Councilor Normandeau to summarily dismiss this appeal due to lack of standing. Councilor Frost seconded the motion. The motion carried with one opposed.***

It was noted that the appellant has the option to file a motion with the Wetlands Council to request intervenor status in a related appeal by the Town of Barrington, Docket No. 05-12 WtC, which is currently pending before the council.

- Docket No. 05-19 WtC - Richard Landry: WB #2005-00554  
On November 17, 2005 a Notice of Appeal was filed of the decision to deny construction of a seasonal dock on Lake Winnisquam.

***A motion was made by Councilor Sloan to accept the appeal. Councilor Normandeau seconded the motion and it was unanimously voted.***

The meeting recessed at approximately 9:50 a.m.

The meeting was reconvened at 10:00 a.m.

**3. Wetlands Bureau Update**

Collis Adams, Wetlands Bureau Administrator, advised the council that as of July 2006 the current wetlands fee structure will sunset and will result in a loss of approximately \$250,000. Legislation is being introduced to maintain the fee structure at current levels.

The position of mitigation coordinator has been approved and filled. The position is federally funded for one year. Proposed legislation introduced last year for an in-lieu fee program for wetlands impacts will be reintroduced this session for consideration. If approved, it is anticipated that the position will be funded through the in-lieu fee program after the first year.

**5. Other Business**

**Appointments:**

Chairman Fowler noted that Councilor Normandeau's appointment to the council has expired.

**Upon motion made by Councilor Chrisenton and seconded by Councilor Lockwood, it was**

**RESOLVED: That the Wetlands Council expresses its appreciation to Glenn Normandeau for his able representation of the marine industry and for his years of dedication service to the council.**

Chairman Fowler added that Councilor Chrisenton has been nominated for reappointment to represent Environment Protection and Resource Management. Mr. Chrisenton's nomination is expected to be brought before the Governor & Council for confirmation at its December 21, 2005 meeting.

6. **Next Meeting**

The next meeting will be January 10, 2006.

7. **Adjournment**

***A motion was made by Councilor Lockwood, seconded by Councilor Frost and unanimously voted to adjourn.***

The meeting adjourned at approximately 10:50 a.m.